



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

March 1, 2001

Conditional Approval #455
April 2001

Mr. Daniel M. FitzPatrick
Managing Director
Goldman Sachs & Co.
One New York Plaza, 40th Floor
New York, New York 10004

Re: Application by The Goldman Sachs Group, Inc. ("Goldman"), to charter a national trust bank with the title of The Goldman Sachs Trust Company, National Association, New York, New York
Application Control Number: 2000 NE 01 029

Dear Mr. FitzPatrick:

The Comptroller of the Currency ("OCC") has reviewed your application to establish a new national trust bank with the title of The Goldman Sachs Trust Company, National Association ("Bank"). After a thorough evaluation of all data available to the OCC, we have found that your proposal meets the requirements for preliminary conditional approval.

The OCC received comments from a community organization raising concerns about Goldman's involvement in subprime lending, and securitization of residential mortgage loans. Although the Community Reinvestment Act will not apply to the Bank since it will not take deposits or make loans and will not be FDIC-insured, the OCC investigated the concerns raised. The results of the OCC's review are discussed below.

The commenter expressed concerns with Goldman's purchase of Southern Pacific Corp. ("Southern Pacific"), a bankrupt subprime lender. Goldman indicated it purchased the assets of Southern Pacific, including subprime mortgage loans as part of a court-supervised reorganization; Southern Pacific had ceased making loans prior to Goldman's acquisition. Goldman represented that it has since disposed of Southern Pacific's loan portfolio.

The commenter noted that Goldman is listed in a table of top ten underwriters of mortgage-backed securities. The commenter also stated that Goldman makes multi-family mortgage loans and owns multi-family properties through its Archon Group unit, a subsidiary of Goldman.

Goldman acknowledged it is active in traditional mortgage securitization, which may include subprime loans from time to time. However, Goldman represented that it does not engage in residential mortgage lending. Goldman also represented that Archon Group provides management services for commercial mortgage loans and real estate investments to investment companies that invest in or own real estate assets.

Lastly, the commenter raised concerns with Goldman's involvement in subprime auto lending through Mercury Finance and Falcon Financial. Goldman acknowledged that it has a passive investment in Mercury Finance. Goldman also indicated to the OCC that it underwrote a bond issue by Falcon Financial, a finance company that provides long-term capital loans to privately held car dealerships. However, Goldman securitized loans to these car dealerships, and the bonds were sold to commercial enterprises, not to individual consumers.

Based upon the OCC's review of the issues raised and Goldman's representations, we have found that approval of the proposed transaction was consistent with legal, policy and procedural requirements.

This approval is granted based on a thorough review of all information available, including the representations and commitments made in the application and by the proposed Bank's representatives. In particular, we note the representations that the proposed national bank will apply for membership in the Federal Reserve System and will not be FDIC-insured.

This charter approval is subject to the following conditions:

1. The Bank shall be limited to those activities described in the application and conducted in accordance with representations made in the application.
2. The Bank's initial Tier 1 capital, net of all organizational and pre-opening expenses, shall be \$8.9 million.
3. At all times, the Bank shall maintain a minimum of \$2 million in Tier 1 capital, and also shall maintain at all times capital that meets or exceeds the levels required under 12 C.F.R. Part 3 for an adequately capitalized bank.
4. The Bank and Goldman must enter into a written binding agreement setting forth Goldman's obligations to provide capital maintenance and liquidity support to the Bank, if and when necessary. The terms and provisions of this capital and liquidity maintenance agreement must be acceptable to the Bank and the OCC, and shall include a provision for collateral to support those obligations, if required by the OCC.
5. The Bank shall obtain prior approval from the OCC's New York Field Office before any

significant deviation or change from the proposed operating plan occurs during the Bank's first three years of operation. The Bank must notify the New York Field Office at least sixty (60) days prior to any proposed significant deviation or change.

6. The Bank, Goldman, and its affiliates, upon request by the OCC, shall provide the OCC access to, permit the OCC to examine, and provide the OCC with copies of all books and records, and electronic records that accurately reflect the information in the books and records of the Bank, and any other information of, or concerning the Bank.
7. All transactions between the Bank and any affiliates, foreign or domestic, shall be conducted subject to the applicable provisions of 12 U.S.C. § 371c, and c-1, or other applicable Federal law. The Board of Directors of the Bank annually shall review and approve the service agreements, and any other transactions with foreign and domestic affiliates, including in particular any cost allocation, fee-sharing or tax-sharing provisions in such agreements or other transactions.
8. The Bank must notify all potential technology-related vendors in writing of the OCC's examination and regulatory authority under 12 U.S.C. § 1867(c). All final technology-related vendor contracts must stipulate that the performance of services provided by the vendors to the Bank is subject to the OCC's examination and regulatory authority. The provisions of 12 C.F.R. 9 would be applicable to any fiduciary activities contracted out to vendors.

Please be advised that the above conditions of approval are deemed to be conditions "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC § 1818. These conditions are enforceable under 12 USC § 1818.

Please refer to the "Corporate Organization" booklet (enclosed) in the *Comptroller's Corporate Manual* for the instructions on organizing your bank. The booklet contains all of the steps you must take to receive your charter. As detailed in the booklet, you may establish the corporate existence of and begin organizing the Bank as soon as you adopt and forward acceptable Articles of Association and the Organization Certificate to this office. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining final approval, but you may not begin the business of banking until you fulfill all requirements for a bank in organization and you are granted final approval by the OCC.

Enclosed are standard requirements that must be met before the Bank will be allowed to commence business. Management must ensure that the applicable policies and procedures are established and adopted by the Board of Directors before the Bank commences business. Applicable standard requirements also must be satisfied before the Bank will be allowed to commence business. In addition to the standard requirements, the Bank must meet the following requirements prior to opening:

1. The Bank must submit to the OCC for review and approval a complete description of the Bank's final information systems and operations architecture as well as the information systems risk assessment and management plan. This should include a schematic drawing and discussion of the following items:

Vendor due diligence and contracts; electronic banking security mechanisms and policies; personnel; internal controls; audit plans; and operating policies and procedures including, but not limited to, vendor management, customer authentication, privacy, and disaster recovery and business resumption plans.

2. The Bank must have performed an independent security review and test of its electronic banking platform. It must have this review performed regardless of whether the platform is operated in-house or by one or more third-party service providers. If the Bank outsources the technology platform, it can rely upon testing performed for the service provider to the extent that it satisfies the scope and requirements listed herein. The review must be conducted by an objective, qualified independent source ("Reviewer"). The scope should encompass all access points, including the Internet, Intranet, or remote access, and it must cover the adequacy of physical and logical protection against unauthorized access including individual penetration attempts, computer viruses, denial of service, and other forms of electronic access. By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. The report must critique the effectiveness of security policies and controls and confirm, with reasonable certainty, that unauthorized internal or external data and network access or access attempts are detected and recorded. As part of its decision to grant final charter approval, the OCC will consider the results of the report as well as any subsequent actions by the Bank or service provider to implement any recommendations or to remedy any noted security or control deficiencies.¹

We note that the organizers are planning to offer a transactional Internet banking service. However, they have not decided whether the Bank will establish a stand-alone web site or, alternatively, will have its web page embedded in and accessible through Goldman's web site www.gs.com. Although the Bank currently does not have plans to allow customers to open accounts online, please note that the OCC expects a national bank to exercise appropriate caution and due diligence when opening accounts using the Internet, mail, and other non-traditional

¹ Prior to the OCC granting final approval to open, the Bank will be required to have a security program in place to assure the security of customer information pursuant to the new Interagency Guidelines on Standards for Safeguarding Customer Information, 12 C.F.R. § 30, 66 Fed. Reg. 8616 (February 1, 2001). After opening, management should evaluate the impact on security risks posed by introducing any additional technology-intensive product, service, or activity. Management should determine whether the security program in place remains adequate in light of any additional or modified risk exposure. The Bank should then adjust the security program as necessary before introducing the new technology-intensive product, service, or other activity.

means. Any plans by the bank in this regard should include internal systems and controls that address the risks associated with such accounts.² Systems and controls should also include appropriate procedures to verify customer information as part of the account opening process, to monitor for fraud after an account has been opened., and to properly authorize transactions. If the Bank plans to have its web page(s) contain links to its affiliates that provide financial products and services or to third party providers of products and services, the Bank should provide customers with appropriate disclosures via electronic means.³

Please be aware that the trust officers and staff should become thoroughly familiar with "Fiduciary Powers of National Banks and Collective Investments" at 12 C.F.R. 9 and 12 C.F.R. 5.26. Management is reminded that 12 C.F.R. 5.26 requires a national bank which already has approval to engage in fiduciary activities to provide written notice to the OCC when commencing fiduciary activities in a new state. Also, in addition to the independent annual audit requirement referenced in the standard requirements, the Bank will need to develop and implement a fiduciary audit program as required by 12 C.F.R. 9.

The OCC poses no objection to the following persons serving as executive officers and directors as proposed in the application:

Daniel M. FitzPatrick	President/CEO/COB
Elliott K. Lytle	Director/Chief Operating Officer
Steven M. Bunson	Director
Thomas C. Brasco	Director
Suzanne O. Donohoe	Director
David W. Blood	Director
John M. Perlowski	Director

Please be advised that the OCC has not yet completed all the standard background checks on the

² These internal systems and controls would include appropriate measures that respond to the risks of enabling Automatic Clearing House transactions on the Internet *see e.g.*, OCC Advisory Letter 2001-3 (January 29, 2001) ("Internet-Initiated ACH Debits/ACH Risks").

³ The OCC previously has indicated that it expects national banks offering links or so-called hyperlinks to take reasonable steps to clearly distinguish between products and services that are offered by the bank and those offered by a third party or bank affiliate. Bank customers should be able to identify when they are dealing with the bank itself and when they are dealing with another party. In general, the bank should indicate that it does not provide, endorse, or guarantee any of the products or services available through the third party web pages. Further, banks have responsibility for the appropriate placement of disclosures via electronic means on their web page(s). *See, e.g.*, OCC Bulletin 98-31 (July 30, 1998) ("FFIEC Guidance on Electronic Financial Services and Consumer Compliance"). The OCC will continue to work with national banks as these aspects of electronic commerce and the Internet develop.

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executive officers and proposed directors. While we have decided not to delay our decision regarding preliminary approval, we retain the right to seek appropriate remedies if any significant, negative information is revealed.

You are reminded that additional executive officers are subject to the OCC's prior review and clearance. Also, for a period of two years after the Bank has opened for business, the OCC must review and have no objection to any new executive officer or director prior to that person assuming such position.

The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications.

Please direct any questions concerning this preliminary conditional approval to Senior Licensing Analyst Sandya Reddy in the Northeastern District Office at (212) 790-4055, or to me at (202) 874-5060.

Sincerely,

-signed-

Maria G. Arevalo
NBE/Senior Licensing Analyst
Licensing Operations

Enclosures: "Corporate Organization" Booklet
Standard Requirements
Minimum Policies and Procedures